Supreme Court, U.S.
FILED
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In The
Supreme Court of the United States

October Term, 1994

CHARLES B. WELLS
Petitioner

v.

THE UNITED STATES, et al.
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

CHARLES B. WELLS
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Pro Se

February 14, 1995

3708

QUESTIONS PRESENTED FOR REVIEW

1. Whether, under the Due Process Clauses of the Fifth and Fourteenth Amendments, a trial judge may constitutionally deny a proceeding to trial on a lawsuit, even though the U.S. Navy; legal Gravaman; the U.S. Army; Administrative Claims and Tort Division, the U.S. Department of Justice; U.S. Marshals Headquarters, and a retired U.S. District judge all reviewed the numerous issues of facts existing and evidence previously presented to them and a Court of Veterans Appeals, that conclusively the remedy lay in a Tort Action, and Petitioner filed in the U.S. District Court of Jurisdiction, and presented the evidence?

2. Whether a trial judge's refusal to hold an evidentiary hearing, mandate a meeting between parties to resolve the issue, accepted hearsay as truth, and assigned the case to a U.S. Magistrate, did delay proceedings by demanding a second amended complaint; and by the Courts Rules, invoking 39.1 by law, a meeting between the parties within 60 days must take place; the defendants refused any such meeting and in default, the judge accepted a Report and

Recommendation by the Magistrate, strongly objected to by Petitioner as erroneous, prejudicial and untimely, and violates Petitioners rights to due process of the law and trial by jury?

LIST OF PARTIES

The parties to the proceedings below were the Petitioner Charles B. Wells, an individual, U.S. District Court Judge Thomas Zilly, U.S. Magistrate David Wilson, caseworker Casey Condon, Assistant Attorney Robert M. Taylor, Director of the Department of Veterans Affairs Regional Office Richard Krazeck, consulting lawyer Stephen Gold.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW_____i

LIST OF PARTIES_____iii

TABLE OF CONTENTS_____iv

TABLE OF AUTHORITIES_____v

JURISDICTION OF THIS COURT_____1

CONSTITUTIONAL AND STATUTORY PROVISIONS_____2

STATEMENT OF THE CASE_____3

REASONS FOR GRANTING THE WRIT_____13

APPENDIX_____15

TABLE OF AUTHORITIES

Petitioner asks the Court to know he does not have the money to retain good law firms and thus no staff to research Case Laws specifically relating to this lawsuit. Law firms at different costs have assisted, interpreted terms, and guided petitioner to this point. These include the law firms of Stephen Finta; of Miami, FL., Carr and Kessler of Atlanta, GA., and Beli's Firm of San Francisco, CA., however knowing of the extreme prejudice and often hatred of the Asian (Vietnam) veteran, the futility at seeking full restitution and their costs. Petitioner relies on similar cases of public health hazards with medical injuries and death being suppressed to where this Highest Court and Legislative action took place in establishing precedents, e.g.; auto safety glass; asbestos; lead poisoning in paint and gasolines; to the HIV contamination of blood banks. Otherwise sources are Department of Defense, Army Medical Research and Development Command, the Veterans Administration/Department of Veterans Affairs, Vietnam Veterans of America, Embassy officials and representatives of five allied countries veterans, involved in the war.

The total numbers and cases in litigation or settled; petitioner does not know.

JURISDICTION OF THIS COURT

This Court has jurisdiction under 28 U.S.C. S. 1291 (1988) to review the judgment of the U.S. District Court for the Western District of Washington, which was entered on August 30, 1994. Petitioners Appeal for remand was timely filed and was dismissed by the U.S. Court of Appeals for the Ninth Federal Circuit on November 29, 1994.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitutional Amendment V provides, in pertinent part: "No person shall be...deprived of life, liberty or property, without due process of law..."

U.S. Constitutional Amendment III provides, in pertinent part: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

U.S. Constitutional Amendment XIV S. 4, provides in pertinent part: "The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be abridged".

STATEMENT OF THE CASE

Petitioner was sick during wartime service in 1964 to 1965, and was sent to the United States. In 1968 obtained an Airline Pilots career with Eastern Air Lines, Inc. and was honorably discharged from the U.S. Army in December, 1970.

Petitioner married a flight Attendant in December, 1971 and they made investments, plans, and enjoyed life in the American tradition raised with.

Petitioner was hospitalized by the Airlines Medical Department in February, 1973 and a year later found medically unsound; his career was over. No specific cause or reason could be found by medical doctors for such a profound condition. The Plaintiff separated was being sued for divorce.

In 1979, Petitioner began to find probable cause and in 1980 filed a claim for compensation for Agent Orange and Post Traumatic Stress Disorder (PTSD) to the VA Regional Office in Atlanta, Georgia.

In 1984, admitted to the VA Hospital in Atlanta, and then transferred to the VA hospital, Augusta, Georgia. In 1986 the regional Office awarded a 100 percent disability for PTSD and a monthly pension started. A two-year lump sum was retroactively paid and Petitioner appealed for full retroactive compensation back to 1973 when PTSD had struck him down, and for Agent Orange compensation. The appeal was denied.

Petitioner in 1989 saw a book; "Men, Stress, and Vietnam', by Peter G. Bourne and found therein Walter Reed Army Institute of Research in 1963 put together a medical research team and sent them to Vietnam where they focused on Special Forces, Counter Insurgency Operatives and Helicopter crews. This led to letters and phone calls and further discovery of Federal Documents. The fact that the exact etiology of war trauma and those in sustained life threatening situations bodily chemistry became imbalanced, and they had made this medical evidence testimony in the House and Senate, 91st Congress; 1969-70.

Petitioner went to the Vietnam Veterans of America, National Service Officer; Ed Chow, who

filed an original claim in the VA/DVA Regional Office of Seattle and Petitioner was consulted by Veterans Administration Federal Contract Officers and the Veterans Judicial Review Act of 1988. Petitioners claim re-opened was sent by the Director of the Department of Veterans Affairs; Regional Office to the Board of Veterans Affairs (BVA) in Washington, D.C. for review. The BVA decided the claim was a case for the newly formed U.S. Court of Veterans Appeals (COVA).

Petitioner as Appellant; represented by VVA counsel; and noting Associate Judge Kenneth Kramer, a former Army Judge Advocate; served terms in the House of Representatives until this appointment, and on his staff was Bill Russo; formerly a founder with others including petitioner of the National Veterans Legal Services Project, and a lawyer, had only some reservations of still top secret material, revealed relevant sources. Docket number 90-1167 under Judge Kenneth B. Kramer was assigned; as the case developed; military intelligence and government agencies faced with charges of 'Criminal Culpability' a cover-up and the results so deliberately set about to diversify the

American people; upset the fundamental principles of equality under law and justice, subvert the Constitution of this republic that even though COVA had been empowered to mandate a 'de Nova' lawsuit; were bound as an article three court to the Department of Veterans Affairs rules and policy; and could only award a monetary settlement retroactive to 1980 when the Veterans Administration first allowed PTSD as compensatory and were still denying any hazard of spraying defoliants, yet publicly towns and cities on toxic waste dumps indigenous the U.S. were being relocated at Government expense. Appellant's case was closed; and pertinent, "no further recourse before this Court is possible".

That decision entered Federal Register; March 6, 1992. The U.S. Army Administration and Tort Claims Division had written the remedy lays with a Tort Action in the U.S. District Court of Jurisdiction.

Plaintiff filed under USC Title 28, Chapter 171.S.2671, stated the complaint, the related case from COVA and why; and the amount certain, demand for restitution, $200,000 dollars.

The court sent a minute order, alleging Plaintiff was using the U.S. District Court to attain Veterans benefits. Plaintiff responded (second amended complaint) with proof positive that was not the case, and in a separate brief invoked their Rule to expedite as John Hopkins and Army Medical Research and Development Command wanted Plaintiff' and may lengthen his life. The Court Docketed and the parties served; including Honorable Madam Janet Reno, U.S. Attorney General, Department of Justice and with a Waiver to respond. Return Receipt was received but no Waiver nor other objections to the proceedings was sent. Lengthy phone calls from persons in the Justice Department as to the nature and in writing came information and one attorney in the Justice Department insisted on knowing how public the Petitioner had gone and was told, "enough to protect me, having worked in the dirty tricks department of the CIA and Army Intelligence, any set up can be arranged," more calls and writing came from the Marshall's Headquarters until their part was explained that prosecution of those criminally culpable in suppressing the testimony is the duty of the Justice Department and

Marshall's service. Casey Condon; caseworker U.S.D.C. Judge Zilly said in a conversation, "no motion to yours has been filed, you are right, they are in default". Five days later 'pre-dated' a motion for dismissal was on record. The Court then assigned the case to a U.S. Magistrate invoking Rule 39.1 against strenuous objections by Plaintiff. No response except another 'Minute Order'; assignment to a panel for 'pro bono'. Plaintiff by Motion consented on the assurance of Casey Condon the case would be expedited. A memorandum in support of dismissal was introduced, signed by a Stephen M. Gold. Plaintiff spent time and money to find who he was. Three calls to the DVA Regional Office; each answered by a different person; not a one had ever heard of him. A call was placed by Steve Hunter; of Beli's law firm to find Stephen M. Gold is a consulting lawyer to much; one being a Tort Action against the Department of Veterans Affairs arising in the state of Washington. Petitioner as Plaintiff submitted this fact; and that Stephen M. Gold had no knowledge of the Plaintiff's cases; circumstances; or in fact anything to do with Administration claims or the

Regional Office; and is irrelevant. The court and by another tactic; every letter; to the U.S. Attorneys Office; Seattle was by legal messenger; paraphrased by U.S. Assistant Attorney Robert M. Taylor, who refused certified mail; and referred to a Fed.C.R.P.8; which does not exist; the closest in Federal Civil Rules is 'RESERVED'. The timely limits ran out and Plaintiff had written and called in good faith to have a meeting and try to resolve the matter. Two calls were placed; one by a military legal services Captain, and she was yelled at; profaned and slander used as to "these damn Vietnam Veterans", ..."what the hell do they want", informed he was tape-recorded; another Federal Agent listened to more abusive language and hung up. Plaintiff waited and called Robert M. Taylor, who said he would never have a meeting with Plaintiff and see his lawsuit dismissed. U.S. Magistrate David E. Wilson went further in his Report and Recommendation by stating in writing that the Plaintiff alleges this and alleges that, when the evidence and proof submitted to the U.S. District Court and there for the reading, went ignored. He goes on as a veterans matter or an Army

matter, and alludes to conspiracy and theories. The Judge does not read that Petitioner was 'released from active duty' and not discharged; the significance being by the laws of conscription; Petitioner had to let the Army know where he was at all times until his discharge in December, 1970; and therefore since the Army knew of the potential aspects of War Trauma; after the fact, ample opportunity was available to notify all such possible victims as Petitioner, and they were served with a lawsuit and Tort claims administrative action by the Marshall's service. Sam Paul Klein of Walter Reed and the Army Surgeon General in 1990 had already responded 'their sworn oath had been done by testifying at those hearings before the House and Senate and that testimony is the heart of the controversy. Plaintiff by invitation in the form, OBJECTION; responded that the Report and Recommendation is so biased; prejudiced and ignorant in context as to be dismissed, as 30 years of U.S. involvement; most importantly 16 years from 1959- to 1975; five allied countries; two trillion dollars later; 16 million dead; 19 million wounded and maimed, refugees; to lose and just begin to grasp

the stakes in the aftermath is frivolous, and only proves a mentality that some think a social level of income is acceptable as long as they are in the elite of power...to think or equate VA medical care with any humane approach; consideration; or costs has been uncovered and revealed on CBS 60 Minutes and PBS documentaries; the despicable way war torn people are treated in this country...the report was accepted and the case dismissed anyway.

A timely Appeal was filed following Federal Circuit and Civil Rules; only to receive a letter that no formal guidelines were necessary and a Pro Se package and guidelines included. The required 15 copies and transcripts and check for docketing and filing fees were sent certified mail and return receipt in hand; Plaintiff/Appellant called as to why another letter arrived referring to the Ninth Federal Circuit Court of Appeals rules should be requested by letter.

There ensued an operator; a supervisor, Cynitha Fuller, who said she was the caseworker and no check was there. The check ended up back

at the U.S. District Court and then a form with box checked, and check sent to Plaintiff, was sent back to the Ninth Federal Circuit Court of Appeals. A Cynitha Fuller turned out to be a Cynitha Fuller Walker; and she denied receiving the check and letter; then said, "oh, shut up", and hung up. Later she laughed at transposing numbers and making mistakes, then a person claiming to be a supervisor said she was too busy to answer about cases sent out wrong and ignore them; and "you in pauperis" we have better things to do...and hung up. A November 1st order came on the 17th, in 20 hours the requirements were met and sent certified and return receipt on November 18th, 1994; excluding weekends and one holiday, the 14-day deadline was met. Return receipt was in hand on the 23rd of November. Next was four legal holidays for Thanksgiving; and on December 5th, an order to dismiss arrived.

Plaintiff/Appellant Petitions this Highest Court, as the Court of Last Resort.

REASONS FOR GRANTING THE WRIT

I

The Decision to deny a proceeding to trial on a lawsuit, previously found "in the most favorable light" to Appellant, violates fundamental principles of due process. This case raises a constitutional issue of first impression as the Plaintiff's cause for action is so publicly tainted by prejudice, stereotype, adverse publicity, and Government indifference, a trial judge is challenged to where basic rights and judicial proceedings was decided on preconceived notions and not on the merits of the case.

II

The Lower Court's dismissal demonstrated undo influence by defendants without regard to evidence, factually and legally; nor to Plaintiff's motions, letters, calls and one of the defendants engaging in litigation tactics employed in bad faith and objected to in writing was not even considered. U.S. Assistant Attorney, Robert M. Taylor knowing of his impropriety of office, resorted to ranting,

raving, and renewed determination to convince the the Court to dismiss by erroneous misinformation.

III

This Court should grant Certiorari for the evidence which is the very foundation and grounds for this action to be read; for the U.S. Districts Courts mandate to a hearing; and for Petitioner to have his day in Court before a trial by jury, or are they afraid to let a jury decide justice.

APPENDIX

A1 Federal jurisdiction basis in the Court of first instance.

A2 Reproduced the decision of the U.S. District Court of Western District Washington.

A3 Report and Recommendation reproduced.

A4 Reproduced the decision of the Ninth Federal Circuit Court of Appeals.

A5 An appended matter.

A1

Jurisdiction for the U.S. District Court for the Western district of Washington is USC Title 28, Chapter 171, Section 2671.

A2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES B. WELLS, III, Plaintiff,	)	
v.	)	No. C93-594Z
UNITED STATES OF AMERICA, Defendant	)	ORDER

The court, having reviewed Plaintiff's Complaint, Amended Complaint, (second) Amended Complaint, Defendant's Motion to Dismiss, Defendants (second) Motion to Dismiss, Plaintiff's response thereto, the report and Recommendation of the Honorable David E. Wilson, United States Magistrate Judge, and the remaining record, hereby finds and orders:

1. The court adopts the Report and Recommendation;

2. Defendants Motion to Dismiss Plaintiff's (second) Amended Complaint is GRANTED;

3. This case is dismissed without prejudice; and

4. The clerk is directed to send a copy of this Order to Plaintiff, counsel for defendant, and to Judge Wilson.

Dated this 30th day of August, 1994

Thomas S. Zilly
United State District Judge

A3

REPORT AND RECOMMENDATION reproduced

CHARLES B. WELLS	)	
Plaintiff	)	No. C93-594Z
v.	)	REPORT AND RECOMMENDATION
UNITED STATES OF AMERICA	)	
Defendant.	)	

INTRODUCTION

This case was initiated via a Compliant files by Plaintiff, pro se, on April 28, 1993. On May 5, 1993, the Court issued an Order finding that the case was improperly pled, and gave Plaintiff leave to amend. On May 11, 1993, Plaintiff filed an Amended Complaint (docket #3) alleging and action under the Federal Tort Claims Act ("FTCA").

On October 19, 1993, the United States moved to dismiss under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 12(b), arguing that Plaintiff had failed to comply with the pleading requirements.

DISCUSSION

While Plaintiff's filings are confusing, and peppered with allegations of conspiracy and collusion between and among the various governmental agencies and personnel he has encountered in this case (and before this case), I believe that it is possible to ascertain the nub of his complaint, even though it is not possible to ascertain many critical details, such as who he alleges committed the tortious act, which agency(s) they worked for, and when the alleged wrongs are supposed to have occurred. I also believe that once the essence of the Complaint is ascertained, that it is clear that he has no action under the FTCA, and that the case should be dismissed.

Plaintiff alleges that he served in the United States Army in Vietnam during the hostilities there; that he is forced by his "privilege against disclosure" to refuse at this time to disclose the "entire set of documentation" which he possesses and which he maintains establishes his work in "CIG/CIA

operations" [sic]; but that he will open these files for "review and inspection at a trial." (motion to Deny Defendant's Motion to Dismiss, docket #37 at 2). He further alleges that he left the Army and obtained employment as an airline pilot (id.), but in 1973, suffered a "total emotional and mental breakdown resulted in loss of career; monies, divorce with child; endless medical costs is pointless to go on" [sic] (id.), at 3). He was awarded 100% disability benefits from the Veterans' Administration in 1986 (id.) for Post Traumatic Stress

Disorder. He claims that he has been subjected to threats from the Defense Intelligence Agency, the (Army) Criminal Investigations Division ("CID"), the Secret Service, and others, who have threatened to put him in "Leavonworth as a political prisoner" [sic] if he reveals details of his service in Vietnam. (Docket #14 at 1).

He asserts that he began discovering evidence in 1990 and learned that "the Government knew all about this condition...and said and did

nothing." (Motion to Deny Defendant's Motion to Dismiss at 3). The "condition" to which he refers is the Government's alleged knowledge, allegedly gained while he was still in the military, that psychiatric casualties were occurring among those serving in Vietnam, for which he cites several publications. (Id. at 2). Plaintiff seeks $200,000 in "restitution" for the permanent injuries he alleges that he received while in the Army in Vietnam. He claims that he is suing "strictly the U.S. Senate; the U.S. Congress; the Surgeon General of the U.S.; and the Secretary of Health, Education and Welfare, all of whom were present at the hearings." (Docket #14 at 2).

Plaintiff now asserts in is [second] Amended Complaint (docket #27) that he is suing under the FTCA, and has included a letter from the U.S. Marshall's Service (dated July 2, 1993), indicating that that agency had received an Administrative Tort Claim from Plaintiff and forwarded it to the Department of the Army. Plaintiff has also included a letter from the

U.S. Army Claims Service, dated August 16, 1993, constituting "final administrative

action" denying his claim, since 1) the injury he complained of occurred while he was on active duty in the Army and is barred by the decision in Feres v. United States, 340 U.S. 139 (1950), and 2) because the claim was not filed within two years from the date of occurral.

The United States has moved to dismiss the [second] Amended Complaint because of the alleged continued failure of Plaintiff to comply with Fed. R. Civ. P. 8(a), and because, the government asserts, there is no jurisdiction under the FTCA. The government argues that here is no FTCA jurisdiction because Plaintiff 1) has filed no administrative tort claim with the Veterans' Administration, and thus cannot proceed in a tort action against the United States on a theory that the Veterans' Administration has engaged in tortious conduct; and 2) that if his argument is that he is suing based upon the conduct of the Army, such a suit is barred by both the Feres doctrine and the statute of limitations.

In my opinion, the United States' position is correct and the suit should be dismissed.

As to the inadequacy of the [second] Amended Complaint, the government correctly complains that the [second] Amended Complaint is so vague and confusing as to fail to alert them (and the Court) to, among other things, the precise nature of his complaint, which agency(s) he claims wronged him, which agency(s) he has filed administrative tort claims against, and fails to identify the government negligence or omission he is alleging, or when and where

it occurred. The [second] Amended Complaint does not satisfy the requirements of Rule 8(a), Fed. R. Civ. P., and that alone would be sufficient to dismiss the action.

In addition to these fatal flaws in the [second] Amended Complaint, however, it is clear that the whole of the pleadings and filings thus far submitted by Plaintiff establish, in and of themselves, that there is no jurisdiction under the FTCA. Even if Plaintiff's pro se pleadings are construed liberally, he has provided

sufficient information to establish that they do not allege facts which would provide jurisdiction under the FTCA. Plaintiff's mere stating that his action is brought under the FTCA is not sufficient to provide the Court with jurisdiction under that statute.

The United States District Court does not have jurisdiction over suits filed under the FTCA unless Plaintiff can establish the he presented to the appropriate federal agency an administrative tort claim, as required by the Act (28 U.S.C. sec 2675(a)). A complaint filed under the FTCA should be dismissed if such a claim has not been filed. See, Warren v. United States Department of the Interior, 724 F.2d 776, 782-786 (9th Cir. 1984).

Construing Plaintiff's Complaint and his various filings in the light most favorable to him, it appears plain that the only two possible federal agencies as to whom he might have presented administrative tort claims concerning the events of which he

complains, are the United States Army and the Veteran's Administration.

The Veteran's Administration has filed an affidavit stating that Plaintiff never filed an administrative tort claim with its appropriate Washington state office, and that therefore no such claim was denied. Declaration of Stephen M. Gold, District Counsel, Department of Veterans' Affairs, dated October 8, 1993. (Docket #20). In his [second] Amended Complaint and its accompanying filings, Plaintiff attacks the document because (he alleges) an assistant of Mr. Gold's prepared it for Gold's signature and Gold signed it in "collusion" with Assistant United States Attorney Robert Taylor, counsel for the United States in this matter. (Docket #38 at 1). Significantly, however, Plaintiff does not allege that he filed such an administrative tort claim with the Department of Veterans' Affairs, and presents no documentary proof indicating such a filing. Plaintiff's lengthy statements about his separate appeal for Veteran's benefits, e.g., (docket #38 at 2), which was ultimately before the United States Court of Veterans Appeals, was an entirely separate proceeding and was not

brought under the FTCA. Accordingly, the Court may conclude that no administrative tort claim was ever filed with the Department of Veterans' Affairs, and that accordingly no jurisdiction under the FTCA can be based upon the denial of any such claim.

As to the administrative tort claim filed with the Department of the Army, Plaintiff's pleadings and filings establish that the

Army was correct in denying the claim because it was barred by both the Feres doctrine and the statute of limitations. To the extent that Plaintiff's allegations of injuries are understandable, he appears to allege injuries which occurred while he was an active duty member of the military. The Feres doctrine precludes suits by military members or former members for injuries received incident to service, due to alternative remedies which Congress has made available to them. (the 100% veteran's disability benefits which Plaintiff states he is receiving are an example of alternative remedies available to military members and veterans which

are not available to the general public.) As to the statute of limitations, Plaintiff included as attachment to docket #14, a copy of his "DD 214" discharge certificate, which establishes that he was discharged from the Army in 1967, more than twenty six years ago. Accordingly, the Army claims Service on August 16, 1993, properly denied the claim as having been filed more than two years beyond the date it accrued. (Letter, U.S. Army Claims Service to Plaintiff, dated August 16, 1993, filed as an attachment to Amended Complaint (docket #27)).

CONCLUSION

For the reasons set forth, I recommend that the Court grant the Unites States' Motion for Dismissal of Plaintiff's [second] Amended Complaint pursuant to Rule 12(b), Fed. R. Civ. P., for failure to comply with the requirements of Fed. R. Civ. P. 8(a), and for lack or jurisdiction.

A proposed Order is included with this Report and Recommendation.

DATED this 12th day of July, 1994.

DAVID E. WILSON

Unites States Magistrate Judge

A4

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES B. WELLS	)	
Plaintiff/Appellant	)	No. 94-35920
v.	)	DC#CV-93-594-TSZ
UNITED STATES OF AMERICA	)	Western
	)	Washington
	)	(Seattle)
Defendant/Appelee	)	ORDER

Appellant's submittal does not comply with the November 1, 1994 order. Accordingly, this appeal is dismissed.

A certified copy of this order sent to the District Court shall act as and for the mandate of this court.

For the Court:

Cathy A. Catterson
Clerk of the Court

Cathie A. Gottlieb
Deputy Clerk

A5

An appended matter

Petitioner respectfully pleads for the granting of this petition and request the court, under U.S. Supreme Court Rule 43.7 adjudge double the costs to the amount of $400,000 dollars.